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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-875
VAC Chapter title(s)	Virginia Erosion and Stormwater Management Regulation
Action title	Amendment to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) in response to Chapters 5 and 104 of the 2024 Virginia Acts of Assembly
Final agency action date	June 25, 2024
Date this document prepared	May 17, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Chapters 5 and 104 of the 2024 Virginia Acts of Assembly (Del. Wiley, HB 656 and Sen. DeSteph, SB 365) revise state law to fix a "Catch-22" in the law which, if unresolved, could stop land-disturbing projects in certain localities on and after July 1, 2024. The "Catch-22" that these bills fix arises because one provision of the 2016 Stormwater and Erosion and Sediment Control Consolidation Bill, Chapters 68 and 758 of the 2016 Acts of Assembly, states that a locality that does not operate a Virginia Stormwater Management Program cannot approve erosion and sediment control plans for a project until DEQ has issued stormwater permit coverage for the project. However, another provision in this law states that DEQ cannot issue stormwater permit coverage for a project until the locality has approved the erosion and sediment control plans for the project. These bills fix the "Catch-22" by setting up a sequence where the

locality will review and approve erosion and sediment control plans, and then obtain evidence of stormwater permit coverage before issuing its land disturbance approval.

The Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) will be updated to be consistent with the change to state law.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The Governor signed SB365 (Chapter 5 of the 2024 Acts of Assembly) and HB656 (Chapter 104 of the 2024 Acts of Assembly) into law and these changes will become effective July 1, 2024. The Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) will be updated to be consistent with the change to state law.

This regulatory action is required to conform the existing regulation to changes in state law. Section 2.2-4006 A 4 a of the Code of Virginia, excludes regulations that are necessary to conform to changes in Virginia statutory law or the Appropriation Act where no agency discretion is involved from the requirements of the Administrative Process Act.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 25, 2024, the State Water Control Board approved final amendments to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.